Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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	)	
Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the *Cable Television Consumer Protection* and Competition Act of 1992	)	MB Docket No. 05-311
	)	
	)	

COMMENTS OF MICROSOFT CORPORATION

Through its Notice of Proposed Rulemaking in the above-captioned proceeding, the Commission seeks comment on its authority to implement Section 621(a)(1) of the Communications Act of 1934, as amended,[1] to ensure that local franchising authorities ("LFAs") comply with the statutory prohibition against "unreasonably refus[ing] to award" competitive cable franchises.[2] As a leading technology provider of Internet-based solutions to both infrastructure and content providers, Microsoft Corporation ("Microsoft") strongly supports competition among video programming distributors and believes that such competition is best promoted by a coherent regulatory scheme that presents minimal barriers to entry. Accordingly, through these comments, Microsoft commends the Commission for addressing how better to ensure that LFAs, where they have authority to act, do not present an unreasonable barrier to

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[1] 47 U.S.C. § 541(a)(1).

[2] Notice of Proposed Rulemaking, *In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992,* MB Docket No. 05-311, FCC 05-189, at ¶¶ 1, 10 (rel. Nov. 18, 2005) ("NPRM").

market entry and, specifically, expresses our support for the Commission's authority to implement and enforce the terms of Section 621(a)(1).

DISCUSSION

The emergence of broadband platforms and Internet Protocol ("IP") technology is delivering in spades the long-promised convergence of Internet service and products. IP-based services and products today enable the delivery of voice, data and video in new and innovative ways and represent a transition in how consumers communicate and access content and services. The time is near when consumers no longer see the Internet as a distinct medium (they look for information "on the Internet" or make "Internet calls"), but rather simply communicate and receive content and services without even realizing it is being provided in an IP format or via the Internet. Indeed, in its most recent report on video competition, the Commission has recognized that "[t]he amount of web-based video provided over the Internet continues to increase significantly each year…[and] [v]ideo-on-demand services provided by cable, DBS, and Internet providers have emerged, in turn, as competitive alternatives to home videos."[3]

Microsoft is committed to facilitating this evolution to an increasingly IP-based world. Specifically, we offer a variety of Internet and IP-based products and services that use broadband transport connections to create new and innovative consumer experiences. For example, we provide software used to run the Windows Media Center Edition PC, which is available in the market today and enables consumers to access an analog or digital broadcast video service, including an analog multichannel cable video service. Last fall, we reached

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[3] News Release, *12th Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, at 4 (Feb. 10, 2006).

agreement with the cable industry to enable the Media Center Edition PC to access digital cable and interactive services. Microsoft TV Foundation Edition, which is currently being deployed by Comcast in the United States, brings advanced programming-guide functionality along with digital video recording and a client applications platform to traditional cable networks. In addition, we have developed IP-based TV platform products that AT&T is deploying and that Verizon recently launched in Keller, Texas and elsewhere in its region. The Microsoft TV IPTV Edition, being deployed by AT&T, is a comprehensive software platform for broadband providers to offer an IPTV service that integrates seamlessly and economically with other IP-based communications and media services for PCs, phones and other consumer devices.

Microsoft is dedicated to continuing to work with our telecommunications, cable and DBS partners to deliver such innovative Internet and IP-based solutions to consumers. We commend the Commission for undertaking this proceeding to ensure that LFAs, where they have jurisdiction, are not unreasonably interfering with new entrants' ability to obtain a competitive franchise. As described further below, we concur with the Commission that it is in the public interest to increase competition and diversity in the multichannel video programming marketplace. Such competition will benefit from regulatory reform that provides greater clarity to all potential MVPDs and, in the process, reduces regulatory barriers for both extant cable operators and new market entrants. In particular, the nature and architecture of IPTV argues strongly for a regulatory model that greatly reduces — or eliminates entirely — local barriers to entry.[4] In this regard, we believe that the Commission has clear authority to enforce the

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[4] The question of whether IPTV service is outside the scope of Title VI is an important issue that SBC (now AT&T) has raised with the Commission. *See* Comments of SBC Communications Inc., *In re IP-Enabled Services*, WC (continued…)

provisions of Section 621(a)(1) and, if necessary, should act to ensure that LFAs are not an unreasonable barrier to market entrants.

1. Consumers Will Benefit Through A Reduction of Regulatory Barriers for, and Greater Competition Among, All MVPDs.

Microsoft agrees fully with the purposes of the Communications Act "to promote competition in cable communications,"[5] and with the Commission that "[i]ncreased competition can be expected to lead to lower prices and more choices for consumers and, as marketplace competition disciplines competitors' behavior, all competing cable service providers could require less federal regulation."[6] All consumers will benefit by reducing barriers to entry and fostering an environment that will enable the growth of IP services. To this end, we encourage the Commission to protect IP services and all video and broadband companies, regardless of the technology used, from conflicting and overlapping State and local regulation. These services are an integral part of interstate commerce, they utilize interstate or global networks, and they generally require transmission of data and information across state lines. The continued growth of IP services, including multichannel video programming, can only occur with a *de minimis* regulatory touch — and certainly not one with constricting and varied local requirements.

Docket No. 04-36 (May 28, 2004). We believe the issue merits a prompt answer to give clarity to this important technology.

[5] 47 U.S.C. § 521(6).

[6] NPRM at ¶ 1.

With respect to the instant proceeding, Microsoft reiterates what we have previously said to Congress:[7] We think that the current regime of having local and state governments license and regulate video distribution networks needs reform. The current system does not work for telephone companies trying to enter the business, and it does not work for cable companies already in the business. Both networks should not be subject to local and state regulation but should be covered if at all by a federal regime. These are inherently interstate services that, where regulated, should be committed to the federal government for exclusive regulation.

2. Enhanced Video Competition Merits Streamlined Processes.

As noted, Microsoft believes regulatory barriers should be reduced for all cable operators. Accordingly, to the extent that regulation of market entrants is maintained at the LFA level, we believe that applications for competitive franchises should be streamlined. In addition, with respect specifically to IP-based video services, we note that there is an open question as to whether such services are cable services appropriately subject to local franchising reviews and approvals.[8] Whatever the resolution of this authority, we believe that the distinctive architectural nature of IP-based services argues powerfully that new entrants offering IP-based multichannel video programming should be subject to minimal barriers to entry.

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[7] *See, e.g.,* Testimony of Paul Mitchell, Senior Director and Chief of Staff, Microsoft TV Division, Microsoft Corporation, Before the House Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce (Nov. 9, 2005).

[8] *See, e.g.,* Complaint for Declaratory Judgment and Injunction and Petition for Writ of Mandamus, *Pacific Bell Telephone Co. v. City of Walnut Creek*, No. 05-04723 (N.D. Cal. Nov. 17, 2005) (suit challenging Walnut Creek, California's determination that IPTV offering from SBC is subject to city's cable franchising ordinance).

The Congressional decision in 1984 to devolve regulatory authority to local franchise authorities reflected local governments' interest in regulating and collecting revenue from the use of public rights of way and the community-based nature of traditional cable networks and services, which in 1984 were focused solely on the delivery of video (and traditional broadcast) content. In contrast to these cable deployments, IPTV "is delivered over a private, managed IP network that is integrated with the data and voice services provided over the same connection."[9] The IPTV network is an interactive, two-way, switched network with a server-based architecture designed to support a range of IP-based services, including video in an integrated environment. Thus, the potential entrants seeking to provide IP-based multichannel video programming, both telephone companies and cable companies, almost uniformly already have authorization to use public rights of way, for which the entrant already pays a local use fee. Imposing a franchise process on top of that regulatory scheme makes little sense.[10] Finally, the architecture of the typical IPTV network is not one premised on the receipt of a signal at a local head-end for distribution to a defined, closed community. Rather, IP-based networks are regional or nationwide networks that rely on a handful of regional servers to distribute bits of data, broken into IP packets, over a widely dispersed network. In our view, these fundamental architectural differences must be taken into account when deciding whether and how to award video franchises and to whom.

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[9] Comments of Alcatel, *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, at 7 (Sept. 19, 2005).

[10] *Cf.* NPRM at ¶ 22 (discussing right-of-way issue and franchise process).

3. Section 621(a)(1) Empowers the Commission to Ensure that LFAs Do Not Unreasonably Interfere with the Ability of New Entrants to Provide Video Programming.

Leaving aside for another proceeding the specific question as to whether IP-based video services are appropriately subject to LFA review and approval, which as noted above is a question that SBC has appropriately put before the Commission, Microsoft as a general matter agrees with the Commission that Section 621(a)(1) "authorizes [it] to take actions, consistent with Section 636(a), to ensure that the local franchising process does not undermine the well-established policy goal of increased MVPD competition and, in particular, greater cable competition within a given franchise territory."[11] In this regard, we note that, in addition to the general purpose of Title VI to "promote competition in cable communications,"[12] additional provisions of Title VI make clear that Congress intended the Communications Act to embody a national policy in favor of competition in the market for multichannel video services[13] and empowered the Commission to adopt regulations to that end.[14] Moreover, as the Commission itself notes, Section 636(c) provides for the preemption of any local or state law or regulation that is inconsistent with the Act, and of course the Act expressly prohibits franchising authorities from unreasonably refusing to award additional competitive franchises. Given this preemption authority, we believe that it is entirely justified and appropriate for the Commission to conclude

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[11] Id. at ¶ 17.

[12] 47 U.S.C. § 521(6).

[13] *See, e.g.*, Id. at § 548(a) ("The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.").

[14] Id. at § 548(c).

that it may take certain actions to ensure the local franchising process furthers the policy of the Communications Act.

4. The Commission Should Exercise Its Authority to Promote Expeditious Entry by New Entrants.

In addition to agreeing with the Commission about its authority to enforce Section 621(a), Microsoft agrees with the Commission about the scope of Section 621(a) — i.e., that it prohibits "the establishment of procedures and other requirements that have the effect of unreasonably interfering with the ability of a would-be competitor to obtain a competitive franchise."[15] To that end, we believe that the Commission should take appropriate action to eliminate any franchising procedures or requirements that serve as barriers to entry for new MPVDs, including IP-based providers. We note, in this regard, that the Commission seeks comment on a number of practical questions regarding what actions it should take, including whether it should establish specific rules or guidelines to which local franchising authorities should adhere.[16]

Microsoft observes that, in the case of services other than cable service, there is ample precedent for the Commission setting basic guidelines that govern state and local regulation, in order to fulfill the Congressional objectives in the Act. For example, in implementing the 1996 Act, the Commission issued national pricing guidelines and promulgated

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[15] NPRM at ¶ 19. Indeed, the general prohibition in Section 621(a)(1) on unreasonable refusals to award competitive franchises would not have any meaning unless it also precluded processes and other measures that in effect acted to prohibit the award of competitive franchises.

[16] Id. at ¶ 21.

rules regarding state reviews of pre-existing interconnection agreements.[17] Similarly, the Commission's truth-in-billing rules provide guidelines in an area that is traditionally left to local and state regulation.[18] Microsoft believes that it likewise would be useful here for the Commission to set standards and guidelines that will ensure LFAs grant competitive franchises in a timely fashion and in a manner that recognizes the varied media and architectures for providing multi-channel video services. We look forward to the recommendations of the providers, who are most directly affected by the LFA processes, on what those standards and guidelines should entail.

CONCLUSION

Microsoft applauds the Commission for acting to ensure that the pro-competitive purposes of the Communications Act are achieved and that cable franchises are awarded in a manner that is consistent with Section 621(a)(1). We recognize that, in asserting its authority to enforce Section 621(a)(1), the Commission must consider competing viewpoints and tackle difficult questions. We believe that the Commission has taken an important first step in raising the questions through its Notice of Proposed Rulemaking, and we encourage the Commission to take appropriate and, where necessary, specific action in its final rulemaking to uphold Section 621(a)(1). As Commissioner Adelstein noted, this is an "historic opportunity" to encourage broadband deployment by new entrants, such as telephone companies, by granting them a new

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[17] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (upholding the Commission's pricing methodology and rules governing state reviews).

[18] 47 C.F.R. § 64.2401.

revenue source that will help justify investments in new high capacity fiber networks[19] — investments that, in turn, should bring the benefits of an open broadband network to more consumers and contribute to a more open exchange of video content, ideas, and indeed all communications.

Respectfully submitted,

MICROSOFT CORPORATION

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[19] Statement of Commissioner Jonathan Adelstein, NPRM, at 24.